

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Shaheen Khan,
Samir Khan,

Plaintiffs,

versus

Michael Chertoff, Secretary,
Department of Homeland Security,
Emilio T. Gonzalez, Director,
U.S. Citizenship & Immigration Services,

Defendants.

Docket #:

COMPLAINT

Plaintiffs present this mandamus complaint before this Honorable Court requesting relief against Defendants for their failure to act in accordance with the law.

Jurisdictional Basis

- 1) The Court’s jurisdiction over the present action is founded on 28 USC §1361 (Mandamus Act), 28 USC §1331 (federal question jurisdiction).
- 2) Judicial review of actions by agencies of the United States is authorized under 5 USC §701 et seq. (Administrative Procedure Act or “APA”).
- 3) The Court has authority to grant relief under 28 USC §1361 (mandamus), 28 USC §§2201, 2202 (declaratory judgment and further relief), 5 USC §706 (APA).

Venue

4) Venue is proper pursuant to 28 USC §1391(e)(3), which provides that a civil action against the United States or its agencies may be brought in any judicial district in which the plaintiff resides if no real property is involved. No real property is involved in the action and Plaintiffs reside in Ventnor City, New Jersey, which is within this Court's judicial district pursuant to 5 USC §110.

Parties

- 5) Mrs. Shaheen Akhter Khan and her minor child, Samir Khan reside in Ventnor City, New Jersey.
- 6) Michael Chertoff is the Secretary of the Department of Homeland Security. He is being named in this complaint only in his official capacity.
- 7) Emilio T. Gonzalez is the Director of the U.S. Citizenship and Immigration Service. He is being named in this complaint only in his official capacity.

Facts

8) Mrs. Shaheen Khan and her minor child, Samir Khan, are citizens of the Republic of Bangladesh. They entered the United States legally as non-immigrants under a B1/B2 visa. Subsequently, they applied to adjust their status to that of lawful permanent residents pursuant to an approved labor certification.

- 9) The case number for their adjustment of status application is EAC 0301150806. Shaheen was assigned an alien registration number (or A-number) A95 852 570; her son's A-number is A-96 255 672.
- 10) On February 17, 2005, Mrs. Shaheen Khan went to the USCIS office in Cherry Hill, NJ where she was interviewed for adjustment of status by Officer Green.
- 11) Following the interview, Mrs. Shaheen Khan was issued a form with results as follows: Your case is being held for file review, you will receive a decision within **180** days. No additional information is necessary from you at this time.
- 12) After 180 days had elapsed, Mrs. Shaheen Khan and her son, Samir Khan went to the Cherry Hill office, where they were told their files had been moved to Newark.
- 13) Subsequently, Mrs. Shaheen Khan made 3 visits to the Newark office, each time being turned away by the officers there telling her they will inform Examiner R. Brown of her case.
- 14) On October 7, 2005, Mrs. Shaheen Khan and her son, Samir Khan received 2 copies of form G-14, Information Forms from INS, requesting both Mrs. Khan and her son complete designated parts of the form in order to better assist INS in locating their file. Mrs. Khan complied and returned the completed forms to INS.
- 15) Mrs. Shaheen Khan wrote 2 letters, addressed to Examiner R. Brown of the USCIS Newark District Office, dated 28 March 2006 and September 2006. Mrs. Khan asked that Examiner R. Brown respond with the status of their case.
- 16) Following each request for status letter, Mrs. Shaheen Khan received a notice from the DHS office in Newark, NJ written by the same USCIS-Information Officer,

whose name appears illegible, one notice dated 21 December 2005 and the other dated 11 April 2006.

17) In both notices, almost exact in nature, the USCIS Information Officer states that the case is pending and has been referred to the Examination Unit for a response.

Legal Grounds of Relief

18) Plaintiffs' application has been unlawfully delayed for over two years.

19) The processing of a case may not be withheld except in cases where "an investigation has been undertaken involving matter relating to eligibility or the exercise of discretion, where applicable, in connection with the application or petition...." 8 CFR §103.2(b)(18). If a case is validly withheld, it may not be withheld for more than one year. *Id.* If a case is withheld for more than one year, the district director must review the case and may grant only two six-month extensions where appropriate. *Id.* If the investigation is not completed by the second anniversary, the case must be referred to a regional commissioner. *Id.*

20) In a notice dated February 17, 2005, the U.S.C.I.S. informed Plaintiffs that their case was being held for file review and that they would receive a decision within 180 days. The U.S.C.I.S. stated that Plaintiffs were not required to submit any additional information.

21) There is no evidence to show that there is any eligibility question in their case. There also is no evidence to show that the district director or a regional commissioner authorized any extension pursuant to the regulations.

22) Under the Administrative Procedures Act, as codified under 5 U.S.C. § 555(a), agencies are required to proceed with reasonable dispatch to conclude matters presented to them. Under the APA, 5 U.S.C. § 706(a), the District Court has the power to compel agency action which has been unlawfully or unreasonably withheld or delayed.

Exhaustion of Administrative Remedies

23) Plaintiffs have written to the U.S.C.I.S. multiple times; they also paid personal visits to the U.S.C.I.S. field office to inquire about their case. However, they were never given any meaningful answer, and their case remains pending as of the date of this complaint.

Entitlement to Attorney's Fees and Costs under EAJA

24) Plaintiff are entitled to costs and attorney's fees associated with this action. Congress has authorized fee recovery by prevailing parties in the Equal Access to Justice Act. ("EAJA"). Under EAJA, the prevailing litigant is entitled to attorney's fees and costs if the government fails to show that its position was substantially justified or that special circumstances make an award unjust and (3) the requested fees and costs are reasonable. *Perez-Arellano v. Smith*, 279 F.3d 791, 793 (9th Cir. 2002) (citing 28 U.S.C. § d)(1)(A)). As there is no lawful basis for the unreasonably delay, the government's position is not substantially justified, and hence, attorney's fees are appropriate.

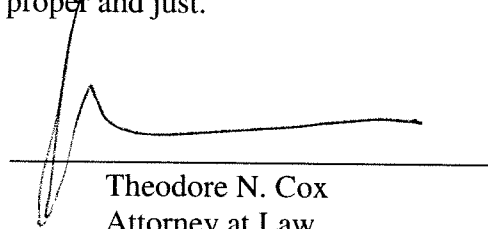
Prayer for Relief

WHEREFORE, Plaintiffs respectfully request that the Court:

- I. Compel Defendants to act on Plaintiffs' adjustment of status application forthwith;
- II. Declare that Defendants' inaction and extended delay to be unlawful;
- III. Grant Plaintiff attorney's fees, costs, and expenses under Equal Access to Justice Act;
- IV. Grant any further relief the Court deems proper and just.

12/5/07

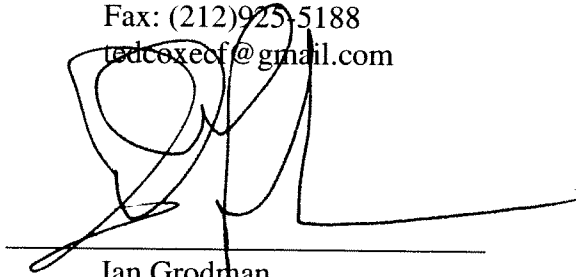
Date



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Fax: (212)925-5188
tedcoxecf@gmail.com

12/6/07

Date



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Tel: (973)313-2424
Fax: (973)313-9712

EXHIBIT A



U.S. Department of Homeland Security
Citizenship and Immigration Services

NEWARK INFORMATION UNIT

970 Broad Street
Newark, NJ 07102

Name: Shahen Khan
Samir Khan

Date: 10/24/05

The following provides an account and official record of the services provided to you by the Information Unit of the Newark District Office. Every effort has been made to assist you in resolving any Citizenship and Immigration related issues. Should you have additional questions after your visit, you may call the National Customer Service Center at 1-800-375-5283.

- ☐ Service records indicate your application: _____ was ☐ approved ☐ denied on _____
- ☐ You have been scheduled for fingerprints (see attached). Failure to comply may result in an unfavorable decision of your application.
- ☐ You are advised to file for Removal of Conditional Residence, (Form I-751). You must file within 90 days before the second anniversary of the date you were granted status as a conditional resident. Failure to file will automatically terminate your status as a conditional resident.
- ☐ Your application (Form I-90) Replacement of Alien Resident Card was processed on _____. You should receive your alien resident card within _____
- ☐ You have been provided with temporary evidence of your status as a legal resident in the United States. You should receive your alien resident card within six to eight months.
- ☐ By law the United States congress has limited the number of asylees who can adjust their status to a lawful permanent resident in any fiscal year. At this time, there are no asylum numbers available. Your case is being held until such time as an asylum number becomes available. Asylum numbers are allocated by priority of filing and you may not be accorded an asylum number during this present fiscal year.

* Other: Your Case (I485) is pending.
We have referred your case to
the Immigration Court for a
response

This notice is intended to assist you with information regarding your visit to the Newark District Office and may not be used as evidence of status.

Sincerely,

John C. [Signature]
CIS - Information Officer - NEW



U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

NEWARK INFORMATION UNIT

970 Broad Street
Newark, NJ 07102

Name:

Aamir Khan
196 255 672

Date:

4/11/06

The following provides an account and official record of the services provided to you by the Information Unit of the Newark District Office. Every effort has been made to assist you in resolving any Citizenship and Immigration related issues. Should you have additional questions after your visit, you may call the National Customer Service Center at 1(800) 375-5283.

- ☐ Service records indicate your application: _____ was ☐ approved ☐ denied on _____.
- ☐ You have been scheduled for fingerprints (see attached). Failure to comply may result in an unfavorable decision of your application.
- ☐ You are advised to file for Removal of Conditional Residence, (Form I-751). You must file within 90 days before the second anniversary of the date you were granted status as a conditional resident. Failure to file will automatically terminate your status as a conditional resident.
- ☐ Your application (Form I-90). Replacement of Alien Resident Card was processed on _____ You should receive your alien resident card within _____.
- ☐ You have been provided with temporary evidence of your status as a legal resident in the United States. You should receive your alien resident card within six to eight months.
- ☐ By law the United States Congress has limited the number of asylees who can adjust their status to a lawful permanent resident in any fiscal year. At this time, there are no asylum numbers available. Your case is being held until such time as an asylum number becomes available. Asylum numbers are allocated by priority of filing and you may not be accorded an asylum number during this fiscal year.

☒ Other: *Your case (Sec 245) is pending background check. We will refer your inquiry to the Immigration Section for a response.*

This notice is intended to assist you with information regarding your visit to the Newark District Office and may not be used as evidence of status.

Sincerely,

[Signature]
CIS—INFORMATION OFFICER—NEW



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services

1886 Greentree Road
Cherry Hill, NJ 08003

Name: **Shaheen Khan**

A #: **95 852 570**

Date: **17 FEB 2005**

Today you were interviewed for adjustment of status. The results of the interview are the following:

☐ A request for additional documentation is made. You are hereby accorded **90** days in which to submit the requested documentation or your application may be denied. Please allow an additional **60** days from receipt of the requested documentation before you make inquiry so we may review your application and the evidence submitted and advise you accordingly of a decision.

SEE FORM I-72 ATTACHED.

☐ Your case is being held due to a fingerprint check/CIA/Security check which is required prior to adjustment of status. Please allow an additional **120** days from today's date or the date of your new fingerprint processing date before you make inquiry so that we may complete the required security checks and advise you accordingly of a decision.

☐ Your case is being held for file review in order to prepare a denial. You will be advised by mail as to a decision within **180** days of today's interview date.

☐ Your priority date is not current at this time and your case will be held in abeyance until such time as a visa number is available for your priority date. Please refrain from inquiring on the status of your case until **90** days after your priority date becomes current.

☐ By law the United States Congress has limited the number of asylees who can adjust their status to lawful permanent residence in any fiscal year. There are no asylum numbers available for you to adjust your status at this time and your case is being held until such time as an asylum number is allocated for your case. Please allow us an additional **60** days after October 1 in which to advise you accordingly of a decision. Note also that asylum numbers are allocated in priority of filing and that you may not be accorded an asylum number as early as this present fiscal year.

☐ Your case is being rescheduled for another interview. Within **120** days you will be advised by mail as to the date and time to appear for another interview.

PLEASE MAKE SURE TO BRING ORIGINAL DOCUMENTS OF ALL EVIDENCE PREVIOUSLY SUBMITTED ALONG WITH ANY NEW EVIDENCE TO BE SUBMITTED FOR CONSIDERATION.

☒ Your case is being held for file review, you will receive a decision within **180** days. No additional information is necessary from you at this time.



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services

1886 Greentree Road
Cherry Hill, NJ 08003

Name: Samir Khan

A #: 96 255 672

Date: 17 FEB 2005

Today you were interviewed for adjustment of status. The results of the interview are the following:

☐ A request for additional documentation is made. You are hereby accorded 90 days in which to submit the requested documentation or your application may be denied. Please allow an additional 60 days from receipt of the requested documentation before you make inquiry so we may review your application and the evidence submitted and advise you accordingly of a decision:

SEE FORM I-72 ATTACHED.

☐ Your case is being held due to a fingerprint check/CIA/Security check which is required prior to adjustment of status. Please allow an additional 120 days from today's date or the date of your new fingerprint processing date before you make inquiry so that we may complete the required security checks and advise you accordingly of a decision.

☐ Your case is being held for file review in order to prepare a denial. You will be advised by mail as to a decision within 180 days of today's interview date.

☐ Your priority date is not current at this time and your case will be held in abeyance until such time as a visa number is available for your priority date. Please refrain from inquiring on the status of your case until 90 days after your priority date becomes current.

☐ By law the United States Congress has limited the number of asylees who can adjust their status to lawful permanent residence in any fiscal year. There are no asylum numbers available for you to adjust your status at this time and your case is being held until such time as an asylum number is allocated for your case. Please allow us an additional 60 days after October 1 in which to advise you accordingly of a decision. Note also that asylum numbers are allocated in priority of filing and that you may not be accorded an asylum number as early as this present fiscal year.

☐ Your case is being rescheduled for another interview. Within 120 days you will be advised by mail as to the date and time to appear for another interview.

-PLEASE MAKE SURE TO BRING ORIGINAL DOCUMENTS OF ALL EVIDENCE PREVIOUSLY SUBMITTED ALONG WITH ANY NEW EVIDENCE TO BE SUBMITTED FOR CONSIDERATION.

☒ Your case is being held for file review, you will receive a decision within 180 days. No additional information is necessary from you at this time.

EXHIBIT B

Case Status Search

Receipt Number: eac0301150806

Application Type: I485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR TO ADJUST STATUS

Current Status:

This case has been sent for a standard interview.

On November 1, 2004, we transferred this case to our NEWARK, NJ location to conduct the interview that is a standard part of processing this I485 APPLICATION TO REGISTER PERMANENT RESIDENCE OR TO ADJUST STATUS. You will be sent a notice when the interview is scheduled, or if the office needs something from you. If you move while this case is pending, call customer service. We process cases in the order we receive them. You can use our processing dates to estimate when this case will be done. This case has been sent to our NEWARK, NJ location. Follow the link below to check processing dates. You can also receive automatic e-mail updates as we process your case. Just follow the link below to register.

If you have a question about case status information provided via this site, or if you have not received a decision from USCIS within the current processing time listed, please contact the USCIS Customer Service at (800) 375 5283 or 1-800-767-1833 (TTY).

EXHIBIT C

Shaheen Khan

June 21, 2007

District Director
USCIS Newark District Office
970 Broad Street
Newark, NJ 07102

Dear Madam or Sir:

SUBJECT: I-485 CASE PENDING SINCE FEBRUARY 17, 2005

A#: 095852570

A#: 096255672

This case has been filed a long time ago and has been in file review status. We have not been able to get an update beyond file review for 2 years now. We have written letters and have been making calls to the service center for any additional information that they can provide us. We have also visited the Newark office to see if there is anything else they needed from us. They just told us to wait, and a few of them were very rude in responses to me and my son. We have also been to the Cherry Hill office as that is where we were interviewed and at first they told us any information we would need would be there. When we went to Cherry Hill, the immigration officer there told us our case has been transferred to Newark District. On November 21, 2005, I visited the office once more and was told by an immigration officer that they would refer our case to the Information Unit for a response. We have written to you once before and have not received a response. My sons are going to school, one in college and another in his grade school years. My older son is not a citizen here yet, and it makes it difficult for him to study and gain a good education. It is important to me they gain a good education here. Please provide us with a response as to our case status; we have heard it has been under file review for more than 2 years now. How much longer can it take?

Sincerely,

Shaheen Khan

September 3, 2006

To: Examiner R. Brown
USCIS
Newark District Office
970 Broad Street
Newark, NJ 07102
Cc: District Director of USCIS

Dear Madam or Sir:

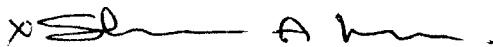
SUBJECT: I-485 CASE PENDING SINCE FEBRUARY 17, 2005

A #: 096255672

A #: 095852570

These cases have been in file review for a very long time and no information has been given to us yet as to what is happening with these cases. We have been to the Cherry Hill office where our interview was originally scheduled after the 180 days that they said it would take. We arrived there to learn they had transferred our case for file review to the Newark offices. We scheduled an appointment to go to the Newark offices to find out what is the status of our cases, only to be given that they cannot give us any information besides that it is in pending status and that only the file reviewer can give us further information. So they forwarded a request for information to the Newark Information Unit. We have even written a letter previously to learn more about what is happening with our case. It is now September of 2006, the last time we have tried to check on the status of this case was in March, in which we sent a certified letter to the person reviewing our files and case. This case has been in pending status since 2005 and the online time schedule for many of the USCIS service centers have already moved onto 2006 applications. There has not even been a single response to notify us of anything, whether through the mail, or even by a phone call. Please we only ask that you provide us with the information we seek, what is the true status of our case and how much longer will we have to wait? Thank you for your time.

Sincerely,



Shaheen Khan

copy: -

March 28, 2006

Examiner R. Brown
USCIS
Newark District Office
979 Broad Street
Newark, NJ 07102

Dear Madam or Sir:

SUBJECT: I-85 CASE PENDING SINCE FEBRUARY 17, 2005
A #: 096258672
A #: 095852870

It has come to my attention that the case for adjustment of status for my son and myself, has been pending for over a year now due to file review. When we first had our interview and our files it was at the Cherry Hill office and we were interviewed by Officer Green. She gave us a form of results for our interview that said: "Your case is being held for file review, you will receive a decision within 180 days. No additional information is necessary from you at this time."

When we returned to the Cherry Hill office after the 180 days, they had said that our files were in Newark. This did not make any sense to me as it had been in the Cherry Hill office for quite some time now. We have been to the Newark office 3 times now, each time being turned away with the officers there telling us they will leave a note for you. I do not know if any of those notices have reached you. I understand that you are a very busy person, but I am in need of a decision soon as my son will need to go to college soon. He has been brought here at a very young age and this family does not make enough money here to provide him with such an opportunity. Although he has earned scholarships, he cannot claim some of them because he is not a permanent resident. We would just like to hear where this is going. I have heard the immigration officers tell me that this process can take up to 2 years at the maximum. My question to you is: have you come to a decision on our files or will the process take more time? If it takes more time, how much more time do you approximate it will take?

I thank you kindly for your time and patience to read this letter. I would just like to ask one favor of you, if it isn't a problem: Please send us a reply to this letter giving us a clearer understanding of what is going on.

If that can be done, I thank you once again and appreciate any information and help you can provide me.

Sincerely,

X
Shahen Khan

U.S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
NEWARK DISTRICT OFFICE